SUPREME COURT U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 161

HELEN I. WATSON, *Petitioner*

v.

THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Claims

REPLY TO MEMORANDUM FILED BY THE UNITED STATES

REES B. GILLESPIE
Shoreham Building
15th & H Streets, N. W.
Washington, D. C.
Counsel for Petitioner

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Respondent presents three distinctions between the instant case and this Court's recent decision in *Service* v. *Dulles*, No. 407, 1956 Term, decided June 17, 1957. These are as follows.

1. Respondent contends (p. 2) that the "most significant" distinction between the dismissal in the *Service* case, *supra*, and the dismissal in the instant case is

that it "involved a loyalty or security background", while the instant case "involved a probational employee." Plainly, the distinction is without substance, for, quite apart from what the status of either petitioner was, in each case the dismissal was in violation of a regulation.

2. Respondent states (p. 3) that "when the Army determined that it *may have failed* to comply with its own regulations * * *", it then proceeded to do so.[1] (Italics supplied) The record is replete with admissions by the Army that it had failed to provide her with the reasons for her dismissal, as was required under the provisions of the Regulations of the War Department CPR 60. (R. 24, 25, 26 and 27) As far as we know there was not a whit of evidence to the contrary in the proceedings below. *Accardi* v. *Shaughnessy*, 347 U.S. 260.

3. Respondent uses broad and sweeping language when it states that the separation of a probational appointment may be accomplished "if for *any* reason it is determined that the probationer should not be accorded a permanent appointment with the statutory protection that comes with such an appointment." No authority is relied upon to support such a contention and we know of none. If, however, such authority existed, it would have no application here for

[1] Respondent refers to the alleged reasons for the dismissal in its footnote 1, and recites them in its footnote 7, despite the fact that the Courts have uniformly held that they will not go into the "merits" of a dismissal, and more particularly, since this Court even as recent as the *Service* case, *supra*, said: (p. 9) "We might also add that we are not here concerned *in any way with the merits* of the Secretary's action in terminating the petitioner's employment." (Italics supplied)

petitioner could not have become eligible for consideration for such a "determination" as to whether she should or should not be accorded a permanent appointment until and only if she had served a period of probation of one year. Here, she was dismissed after serving 6½ months, not "somewhat less than six months". (Respondent footnote 6.)

Respondent "acquiesces in the entry of an order reversing the judgment below and remanding the case to the Court of Claims for reconsideration," in order to enable that Court to determine whether the *Service* case, *supra,* controls this case. In order to do that, this Court must, it is respectfully submitted, grant the writ of certiorari. If the Court does this, the Court should then determine whether the *Service* case, *supra,* is controlling and, if so, reverse the judgment below with direction to the lower Court to grant the relief for which petitioner prays.

If the course suggested by the Respondent is followed and the Court of Claims should decide that the *Service* case, *supra,* is not controlling then petitioner is burdened with the expense of another application for a writ of certiorari because petitioner insists that the *Service* case, *supra,* does control and, therefore, petitioner is entitled to the relief she seeks.

Should this Court decide that the *Service* case, *supra,* is not controlling, then it should determine whether the other reasons assigned by petitioner, as a basis for reversal of the judgment below, are sound.

It is submitted that the *Service* case, *supra,* is controlling. Petitioner, therefore, respectfully requests the Court to grant the writ and reverse the judgment

below with instructions to grant the relief prayed for in the petition.

Respectfully submitted,

Rees B. Gillespie
Shoreham Building
15th & H Streets, N. W.
Washington, D. C.
Counsel for Petitioner